THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2127 OF 2003

Hindustan Petroleum Corporation
Limited. ... Petitioners.

V/s.

Inderlok Hotels Private
Limited. ... Respondents.

N.V.Walawalkar with Mr.Siodia i/b. M/s.Rustamji
& Ginwala for the petitioners.

P.K.Dhakephalkar with Deepak Chitnis
for the respondents.

CORAM : V.C.DAGA, J.

RESERVED ON : 28th July, 2004

PRONOUNCED ON : 26th August, 2004.

JUDGMENT :

. Rule, returnable forthwith.

. Heard finally by consent of parties.

2. This petition is directed against the judgment and order dated 12th September, 2002 passed in Appeal No.98 of 2002 by the Appellate Bench of the Court of Small Causes at Bombay confirming the judgment and decree dated 27th August, 2001 passed by the Judge, Small Causes

Court at Bombay in T.E.Suit No.174/214 of 2000, whereby eviction suit filed by the plaintiffs/ respondents herein came to be decreed. The parties to the petition hereinafter are referred to in the same capacity in which they were before the trial Court.

Background Facts :
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3. The background facts leading to the present petition are as under:

. The petitioners/ original defendants, who are tenants in the action, are lessees claiming that a notice given by the plaintiffs, purporting to terminate their tenancy, was not a good one. The plaintiffs/ respondents herein, after determination of tenancy instituted suit against the defendants; for recovery of vacant and peaceful possession of the suit plot comprising of 650 sq.yards = 5,850 sq.ft. being plot of land bearing C.No.1/1554 of Lower Parel Division, F.P.No.578 (Part) situated at Gokhale Road (S), Dadar, Mumbai- 400 028. ("the suit plot" for short).

4. The case made out in the suit is as follows: That the predecessor in title of the plaintiffs by an agreement dated 19th March, 1955

had created tenancy in respect of the suit plot of land in favour of one M/s.Standard Vacuum Oil Company on payment of monthly rent of Rs.500/- for a period of 10 years commencing from 1st February, 1955. M/s.Standard Vacuum Oil Company after its take over by the Government of India is now known as Hindustan Petroleum Corporation Ltd. ("HPCL Ltd." for short), the defendants in the suit. The plaintiffs have accepted the defendants (HPCL) as their tenant.

5. The plaintiffs alleged in the plaint that the paid-up capital of the defendants being more than Rs.1 crore, they are not protected under the Maharashtra Rent Control Act, 1999 ("Rent Control Act" for short). The plaintiffs by their notice dated 30th May, 2000 terminated the tenancy of the defendants treating them as monthly tenant. The tenancy was to come to an end after expiry of one month from the month of its tenancy in which notice was received by them. They were also put on notice that failure on their part to vacate the suit plot, appropriate ejectment action at law would follow. The defendants did not vacate. Hence plaintiffs filed suit in the Small Causes Court being T.E.Suit No.174/214 of 2000 for ejectment and possession of the suit plot as

stated hereinabove.

6. On being summoned, defendants appeared and filed their written statement denying that they were not protected under the Rent Control Act. They also challenged validity of the notice, whereby their tenancy was terminated. The defendants, by way of defence, pleaded that the suit plot was let out for the purposes of putting up and running a petrol pump and servicing centre which included activities of storage and distribution of petroleum products. The lease being an annual one, the notice is issued under the provisions of section 106 of the Transfer of Property Act, 1882 ("T.P.Act" for short) was not legal and valid. The tenancy ought to have been terminated by issuing six months notice expiring with the end of a year of tenancy. Consequent prayer for dismissal of the suit came to be made in the written statement.

7. The trial Court framed issues relevant to the pleadings. Parties to the suit were permitted to lead their respective evidence. After the evidence was over, parties to the suit

were heard. The trial Court was pleased to hold that the defendants were monthly tenant and termination of their tenancy vide notice dated 30th May, 2000 was legal and valid and that the defendants failed to prove that the lease was annual one. The trial Court was also pleased to hold that the defendants were not protected under the Rent Control Act and that they were liable to be evicted from the suit plot. Based on these findings, the suit was decreed. Defendants were directed to hand over vacant and peaceful possession of the suit plot to the plaintiffs within six months.

8. Being aggrieved by the aforesaid judgment and order, the defendants invoked appellate jurisdiction of the Division Bench of the Small Causes Court. The learned lower appellate Court, after hearing the parties to the appeal, was pleased to hold that the lease in question was not annual lease. It being a monthly lease required only one month notice under section 106 of the T.P.Act for determination of tenancy. In this view of the finding recorded by the lower appellate Court, appeal came to be dismissed vide judgment and order dated 12th September, 2002.

9. Being aggrieved by the aforesaid order, the defendants invoked writ jurisdiction of this Court under Article 227 of the Constitution of India to contend that the lease in question was annual lease and that it was granted for running petrol pump; as such the lease was for manufacturing purpose requiring six months notice to determine lease under section 106 of the T.P.Act.

Submissions:
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10. Mr.Walawalkar, learned counsel for the defendants/ petitioners herein; submits that the impugned judgment, order and decree is erroneous, illegal, contrary to law and suffers from self contradiction which can be said to be an error apparent on the face of record. It has resulted in grave injustice to the defendants. He further submits that the lease was for manufacturing purpose as such it was gross error on the part of the Courts below to hold that it was neither an annual lease nor meant for manufacturing purposes. He further submits that both the Courts below failed to appreciate that the lease in question being a registered lease for a period of 10 years was required to be treated as an annual lease. By

no stretch of imagination it could be treated as monthly lease. Payment of monthly rent was not a decisive criterion. In his submission, the Courts below ought to have held that the lease was annual and it was for manufacturing purposes, such activities in some of the legislations are regarded as manufacturing activities as such one month notice was not sufficient in law to determine tenancy. The notice ought to have been that of six months. He, thus, submits that the impugned judgment and decree is liable to be quashed and set aside.

11. Per contra, Mr.Dhakephalkar, learned counsel for the respondents/ plaintiffs contends that the suit plot of land was not let out for the purposes of putting up and running a retail outlet/ petrol pump. This activity was carried on without getting the terms of the lease deed modified. He, thus, submits that by no stretch of imagination it can be said that the lease was given for manufacturing purposes. Alternatively, it is urged that even assuming that the lease was granted for putting up and running a retail outlet/petrol pump, it does not amount to grant of lease for manufacturing purposes.

12. Mr.Dhakephalkar further submits that it is clear from the record that tenancy was created by a registered tenancy agreement dated 11th February, 1955; wherein monthly payment of rent was provided. The rent was payable by month to month. The rent was to be calculated on monthly basis. It was also paid on monthly basis. Hence it was a monthly tenancy. He placed reliance on the judgment of the Apex Court in the case of **Samir Mukherjee v. Davinder K. Bajaj and ors.**, 2001 (5) SCC 75.

13. Mr.Dhakephalkar further submits that the tenancy in question was never created for manufacturing purposes. At no point of time manufacturing purpose was the dominant purpose of the lease. The burden to prove that the lease was for manufacturing purposes, for the purpose of application of section 106 of the T.P.Act, was on the person who claimed to be so. The said person has to prove that the tenanted property was exclusively let out for the manufacturing purposes or at least dominant purpose of the lease was to permit manufacturing activities. He placed reliance on the judgment of the Apex Court in the case of **Allenbury Engineers Pvt.Ltd. v. Shri Ram Krishna Dalmia and ors.**, AIR 1973 SC 425.

14. Mr.Dhakephalkar further submits that the word "manufacture" as per the dictionary meaning adopted by the Apex Court implies a change, but a mere change in the material is not manufacture, it must be such a transformation that a new and different article must emerge having a distinctive name, character or use. He relied upon the judgment of the Apex Court in the case of **Islands v. Anant Ramchandra**, AIR 1982 SC 127.

15. Mr.Dhakephalkar further submits that in order to prove any activity as manufacturing activity one has to prove that certain commodity was produced and the process of production was involved either labour or machinery and that the end product which comes into existence after the manufacturing process is complete, should have a different name and should be put to a different use. In other words, the commodity should be so transformed as to lose its original character.

16. Mr.Dhakephalkar further submits that in the present case it is an admitted position that the suit plot of land was being used as Petrol Pump and no manufacturing process was carried on at the suit plot of land. Merely selling

petroleum products and pumping of petrol from storage tank by itself does not change the character of the petrol after it is filled in the vehicles; as such there was no manufacturing activity or process carried on at the suit plot of land.

17. Mr.Dhakephalkar, turning to the oral evidence of the witness of the petitioner company recorded before the trial Court, submits that the said witness has, categorically, admitted that no manufacturing activities were carried on at the suit plot of land. He, thus, submits that the defendants themselves have failed to make out case sought to be pleaded by them in defence. He, therefore, submits that the petition is devoid of any substance and the same is liable to be dismissed with costs.

18. In rejoinder, Mr.Walawalkar, by way of last attempt tried to make out a case that the initial period of tenancy was of 10 years. Thereafter, it was renewed for another block period of 10 years and, thereafter, the defendants were the tenant by holding over; as such subsequent tenancy of the defendants was yearly tenancy; irrespective of the fact that no

manufacturing activities were carried on at the suit plot of land as such the suit is liable to be dismissed with costs.

Consideration :
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19. Having heard rival parties, before embarking upon the rival contentions, it is necessary to remove one misconception that the lower appellate Court while summarising findings on issues has recorded gist of the finding against first issue that the lease was for manufacturing purposes. The summary of findings recorded by the lower appellate Court against the first issue has created some misconception in the mind of learned counsel for the petitioners/ defendants. If the judgment of the lower appellate Court is perused in its proper perspective, it has recorded its finding in the following words:

> " ..... It is well settled that if the lease is for manufacturing purpose, it must be lease which at its inception is for that purpose by an agreement of the parties and both the parties must know that the lease is for manufacturing purpose at the time of grant. If that be so, the nature of subsequent user by the tenant without agreement of the lease will not convert it into one for manufacturing purpose. In the present case in hand though appellants have come

with a case that the lease was for manufacturing purpose and the notice for termination of the tenancy is required of six months, the appellants did not take care to examine original predecessor-in-title of the respondent with whom their predecessor-in-title entered into an agreement in the year, 1955. In our opinion if the appellants would have examined the predecessor-in-title of the respondent in that event some light would have been thrown upon their bonafide to show that the lease was for manufacturing purpose as well as it was yearly lease and as alleged by them. However, for reasons best known to them, they have not given any satisfactory explanation to it. Apart from this the appellants did not produce any documentary evidence on record such as registered instrument (lease deed) to show that the lease was for manufacturing purpose only and it is yearly lease and not monthly lease. Apart from this, D.W. at page 8 of the notes of evidence in cross examination has given admissions that no manufacturing activities are going in the suit premises. He has also admitted at same page of the notes of evidence that no licence for manufacturing purpose was obtained by the appellants. Thus, though the lease was for manufacturing purpose in our opinion the notice of 15 days is required for the termination of tenancy as contemplated under second part of section 106 of the T.P.Act, since lease between the parties was monthly lease. .... Therefore, even though the lease may be for manufacturing purpose, since the lease was not from year to year, six months notice was not required."

(emphasis supplied)

Reading of the above part of the judgment of the lower appellate Court, no doubt, gives some impression that the Court has impliedly held that

the lease was for manufacturing purposes but on deeper scrutiny of the said judgment, the said impression has no basis. The trial Court has unequivocally, reached to the conclusion that grant of lease was not for manufacturing purposes and that the lease in question was annual lease has not been established.

20. Mr.Walawalkar urged that the notice given by the plaintiffs purportedly to terminate the tenancy of the defendants was not a good one since the lease was annual one. Before embarking upon the validity of this contention, it is necessary to refer to he section 106 of the T.P.Act.

> **106. Duration of certain leases in absence of written contract or local usage:-**
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> In the absence of a contract or local law or usage to contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six month' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.
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> . Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent

> by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

21. As already pointed out while sketching factual matrix that the predecessor-in-title of the defendants became tenant under an agreement of lease dated 19th March, 1955 for a term of 10 years. The relevant clause of the agreement reads as under:

> " ..... TO HOLD the demised premises unto the tenant from the First day of February 1955 for the term of Ten years (determinable as hereinafter provided) at the monthly rent of Rs.500/- (Rupees five hundred only), payable on or before the fifth day of every succeeding English calendra month, the first monthly payment for the month ending the 28 day of February 1955 to be made on or before 5th day of March 1955."

The lease expired in due course in the year 1965.

22. The renewal clause incorporated in the lease deed reads as under:

> 3. The landlord agree with the tenant as follows :-
>
> (a) ....
>
> (b) ....

> (c) That the landlord will on the written request of the tenant made 2 calendra months before the expiry of the term hereby created and if there shall not at the time of such request be any existing breach of non-observance of any of the covenants on the part of the tenant hereinbefore contained grant to it a lease of the demised premises for the further term of ten years from the expiration of the said term at the same rent and containing the like covenants and provisions as are herein contained.

There is nothing on record to show that this option was exercised at any point of time. In view of terms and conditions extracted hereinabove, the lease expired in due course in the year 1965. Alternatively, assuming that aforesaid option may have been exercised, consequently, the lease was renewed for further period of ten years, even then the lease came to an end in the year 1975, but the defendants continued as tenants of the suit plot, and, under the terms of section 106, which has been read, their tenancy was terminable, thereafter, by fifteen days notice expiring with the end of a month of the tenancy. As already stated, on 30th May, 2000, the plaintiffs gave notice to terminate tenancy, and notice to terminate, so far as material, was in these terms:

> "4. I am, therefore, hereby instructed to call upon you to quit, vacate and handover Quiet, vacant and peaceful

> possession of the abovementioned premises rented to you and occupied by you as my clients monthly tenant at the expiry of one month from the month of your tenancy in which this notice is received by you, failing which ejectment proceeding will be initiated against you at your entire risk as to all costs and consequences thereof, which please note.

Now it is asserted that notice was bad because it was a notice which treated the tenancy as month to month tenancy.

23. Section 116 of the T.P.Act lays down effect of holding over. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106 of the T.P.Act. Meaning thereby, the agricultural tenant who holds over is a tenant from year to year, and so is a tenant who holds over for manufacturing purposes. Where a person holds over under an unregistered lease for a manufacturing purpose for one year, but continues in possession by paying

monthly rent, the holding over must be held as tenancy from month to month as laid down in **Keshavlal v. Lal Ram Chander**, AIR 1952 All 634. The lessee of premises for purposes other than agricultural or manufacture holds over is a monthly tenant as held by this Court in the case of **Meghji v. Dayalji**, AIR 1974 Bom 322. In case of lease for the purpose other than manufacture, tenancy created by holding over under section 116 is a monthly tenancy terminable by either party by 15 days notice. Having reached to the factual conclusion that the lease was not annual lease, the submission advanced by Mr.Walawalkar does not hold good in view of the settled legal position.

24. The second point which arises for consideration is as to what was the purpose of grant of lease. In order to consider this question, one has to turn to the law laid down by the Apex Court from time to time. In **Allenbury Engineers Pvt.Ltd.** (supra) and in **Idandas v. Anant Ramchandra** (supra) the Apex Court, after considering various judgments, laid down the following test to determine as to whether or not the lease was for manufacturing purposes; and also spelt out what constitutes "manufacture" for

the purposes of section 106 of the T.P.Act. According to the Apex Court following aspects need to be proved:

1. That it must be proved that a certain commodity was produced;

2. That the process of production must involve either labour or machinery;

3. That the end product which comes into existence after the manufacturing process is complete, should have a different name and should be put to a different use. In other words, the commodity should be so transformed so as to lose its original character.

In **Shivnarayan Laxminarayan Joshi v. State of Maharashtra**, (1980) 2 SCC 461 (465) the Apex Court while considering the activity of retreading of old tyres held that it does not bring into being a commercially distinct or different entity. Sounding a note of caution it observed that definitions of "manufacture" given in other enactments, such as, in the Factories Act or the Excise Act should not be blindly applied while interpreting the expression ‘manufacturing purposes’ in section 106 of the T.P.Act since in some enactments, for instance in the Excise Act, the term ‘manufacture’ has been given an extended meaning by including in it ‘repairs’ also. It further ruled that if the object of the lease is not exclusively manufacture, then six months

notice is not required. The letting out of the premises could be for a multiple purpose, it could be for manufacturing, residential or any other purpose (such as the carrying on of a trade) and exclusive purpose of manufacturing may not be involved in the lease and a monthly rent if settled from the very beginning, then the lease cannot be said to be one falling under the first part of the section warranting six months notice to determine tenancy. In that event fifteen days notice would be valid. (see AIR 19 3 Raj 337)

25. In the present case, it is an admitted position that the suit plot of land was being used as petrol pump and no manufacturing process whatsoever was carrying on at the suit plot. Merely selling of petroleum products and/or pumping of petrol from the storage tank does not change the character of the petrol. There was no manufacturing process carried out on the suit plot. The oral evidence adduced by the defendants categorically gives admission that no manufacturing activities were carried on at the suit plot and that at no point of time any licence to carry out manufacturing activities was obtained by the defendants.

26. The judgment in the case of **Ramesh Chandra Dutta v. Surya Properties Ltd.**, AIR 1957 Cal. 198 lays down that under provision of section 106 for the benefit of six months notice, the tenant has to prove that his tenancy was exclusively for agricultural or manufacturing purposes otherwise he is not entitled to benefit of six months notice as contemplated by opening part of section 106 of the T.P.Act.

. In the result, petition is dismissed being without any substance with no order as to costs.

27. At this stage, learned counsel for the petitioners prayed for stay of execution of the decree and effect and operation of this judgment. This prayer is opposed by learned counsel for the respondents. However, considering the facts and circumstances of the case, stay to the execution of decree is granted for a period of eight weeks from today, subject to petitioners' furnishing, within one week from today, an undertaking to this Court on oath, not to encumber and/or transfer and/or part with possession of the suit property in any manner whatsoever with further undertaking that they shall deliver vacant and peaceful

possession of the suit property to the respondents/ decree holders without raising any objection, in the event they do not succeed in the higher Court. The petitioners to serve copy of the undertaking on the respondents through their counsel before furnishing it to this Court.

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